

10 CSR 10-5.480 Conformity to State Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded, or Approved Under Title 23 U.S.C. or the Federal Transit Act

(1) Definitions.

(A) Terms used but not defined in this rule shall have the meaning given them by the Clean Air Act (CAA), Titles 23 and 49 U.S.C., other United States Environmental Protection Agency (EPA) regulations, other United States Department of Transportation (DOT) regulations, or other state or local air quality or transportation rules, in that order of priority. Definitions for some terms used in this rule may be found in 10 CSR 10-6.020.

(B) Additional definitions specific to this rule are as follows:

1. Applicable implementation plan defined in section 302(q) of the CAA; the portion(s) of the state implementation plan for ozone or carbon monoxide, or most recent revision thereof, which has been approved under section 110, or promulgated under section 110(c), or promulgated or approved pursuant to regulations promulgated under section 301(d) and which implements the relevant requirements of the CAA;

2. CAA—the Clean Air Act, as amended;

3. Cause or contribute to a new violation for a project—

A. To cause or contribute to a new violation of a standard in the area substantially affected by the project or over a region which would otherwise not be in violation of the standard during the future period in question, if the project, were not implemented; or

B. To contribute to a new violation in a manner that would increase the frequency or severity of a new violation of a standard in such area;

4. Consultation in the transportation conformity process—one (1) party confers with another identified party, provides all information to that party needed for meaningful input, and considers the views of that party and responds to those views in a timely, substantive written manner prior to any final decision on such action. Such views and written response shall be made part of the record of any decision or action;

5. Control strategy implementation plan revision—the applicable implementation plan which contains specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy CAA requirements for demonstrations of reasonable further progress and attainment (CAA sections 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), and 187(a)(7));

6. Control strategy period—with respect to carbon monoxide (CO) or ozone precursors (volatile organic compounds (VOC) and oxides of nitrogen (NO_x)), that period of time after EPA approves control strategy implementation plan revisions containing strategies for controlling CO or ozone, as appropriate. This period ends when the state submits and EPA approves a request under section 107(d) of the CAA for redesignation to an attainment area;

7. Design concept—the type of facility identified by the project, for example, freeway, expressway, arterial highway, grade separated highway, reserved right-of-way rail transit, mixed traffic rail transit, exclusive busway, etc.;

8. Design scope—the design aspects of a facility which will affect the proposed facility's impact on regional emissions, usually as they relate to vehicle or person carrying capacity and control, for example, number of lanes or tracks to be constructed or added, length of project, signalization, access control including approximate number and location of interchanges, preferential treatment for high-occupancy vehicles, etc.;

9. DOT—the United States Department of Transportation;

10. EPA—the Environmental Protection Agency;

11. FHWA—the Federal Highway Administration of DOT;

12. FHWA/FTA project—any highway or transit project which is proposed to receive funding assistance and approval through the Federal-Aid Highway Program or the Federal Mass Transit Program, or requires Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) approval for some aspect of the project, such as connection to an interstate highway or deviation from applicable design standards on the interstate system;

13. FTA—the Federal Transit Administration of DOT;

14. Forecast period—with respect to a transportation plan, the period covered by the transportation plan pursuant to 23 CFR part 450;

15. Highway project—an undertaking to implement or modify a highway facility or highway-related program. Such an undertaking consists of all required phases necessary for implementation. For analytical purposes, it must be defined sufficiently to—

A. Connect logical *termini* and be of sufficient length to address environmental matters on a broad scope;

B. Have independent utility or significance, that is, be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and

C. Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements;

16. Horizon year—a year for which the transportation plan describes the envisioned transportation system in accordance with section (6) of this rule;

17. Hot-spot analysis—an estimation of likely future localized CO pollutant concentrations and a comparison of those concentrations to the national ambient air quality standard. Pollutant concentrations to be estimated should be based on the total emissions burden which may result from the implementation of a single, specific project, summed together with future background concentrations (which can be estimated using the ratio of future to current traffic multiplied by the ratio of future to current emission factors) expected in the area. The total concentration must be estimated and analyzed at appropriate receptor locations in the area substantially affected by the project. Hot-spot analysis assesses impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, and uses an air quality dispersion model to determine the effects of emissions on air quality;

18. Incomplete data area—any ozone nonattainment area which EPA has classified, in 40 CFR part 81, as an incomplete data area;

19. Increase the frequency or severity—to cause a location or region to exceed a standard more often or to cause a

violation at a greater concentration than previously existed and/or would otherwise exist during the future period in question, if the project were not implemented;

20. ISTEA—the Intermodal Surface Transportation Efficiency Act of 1991;

21. Maintenance area—any geographic region of the United States previously designated nonattainment pursuant to the CAA Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under section 175A of the CAA;

22. Maintenance period—with respect to a pollutant or pollutant precursor, that period of time beginning when a state submits and EPA approves a request under section 107(d) of the CAA for redesignation to an attainment area, and lasting for twenty (20) years, unless the applicable implementation plan specifies that the maintenance period shall last for more than twenty (20) years;

23. Metropolitan planning area—the geographic area in which the metropolitan transportation planning process required by 23 U.S.C. 134 and section 8 of the Federal Transit Act must be carried out;

24. Metropolitan planning organization (MPO)—that organization designated as being responsible, together with the state, for conducting the continuing, cooperative, and comprehensive planning process under 23 U.S.C. 134 and 49 U.S.C. 1607. It is the forum for cooperative transportation decision-making. The East-West Gateway Coordinating Council is the MPO for the St. Louis metropolitan area and the organization responsible for conducting the planning required under section 174 of the CAA;

25. Milestone—defined in section 182(g)(1) of the CAA. A milestone consists of an emissions level and the date on which it is required to be achieved;

26. Motor vehicle emissions budget—that portion of the total allowable emissions defined in a revision to the applicable implementation plan (or in an implementation plan revision which was endorsed by the director, subject to a public hearing, and submitted to EPA, but not yet approved by EPA) for a certain date for the purpose of meeting reasonable further progress milestones or attainment or maintenance demonstrations,

for any criteria pollutant or its precursors, allocated by the applicable implementation plan to highway and transit vehicles. The applicable implementation plan for an ozone nonattainment area may also designate a motor vehicle emissions budget for oxides of nitrogen (NO_x) for a reasonable further progress milestone year if the applicable implementation plan demonstrates that this NO_x budget will be achieved with measures in the implementation plan (as an implementation plan must do for VOC milestone requirements). The applicable implementation plan for an ozone nonattainment area includes a NO_x budget if NO_x reductions are being substituted for reductions in volatile organic compounds in milestone years required for reasonable further progress. For purposes of meeting the conformity test required under sections (17)—(19) of this rule, the motor vehicle emissions budget in the applicable Missouri State Implementation Plan shall be combined with the motor vehicle emissions budget for the same pollutant in the applicable Illinois State Implementation Plan;

27. National ambient air quality standards (NAAQS)—those standards established pursuant to section 109 of the CAA;

28. NEPA—the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.);

29. NEPA process completion—with respect to FHWA or FTA, the point at which there is a specific action to make a formal final determination that a project is categorically excluded, to make a Finding of No Significant Impact, or to issue a record of decision on a Final Environmental Impact Statement under NEPA;

30. Nonattainment area—any geographic region of the United States which has been designated as nonattainment under section 107 of the CAA for any pollutant for which a national ambient air quality standard exists;

31. Not classified area—any carbon monoxide (CO) nonattainment area which EPA has not classified as either moderate or serious;

32. Phase II of the interim period—with respect to a pollutant or pollutant precursor, that period of time after December 27, 1993, lasting until the earlier of the following:

A. Submission to EPA of the relevant control strategy implementation plan revisions which have been endorsed by the director, and have been subject to a public hearing; or

B. The date that the Clean Air Act requires relevant control strategy implementation plans to be submitted to EPA, provided EPA has made a finding of the state's failure to submit any such plans and the state, MPO, and DOT have received notice of such finding of the state's failure to submit any such plans. The precise end of Phase II of the interim period is defined in section (24) of this rule;

33. Project—a highway project or transit project;

34. Protective finding—a determination by EPA that the control strategy contained in a submitted control strategy implementation plan revision would have been considered approvable with respect to requirements for emissions reductions if all committed measures had been submitted in enforceable form as required by CAA section 110(a)(2)(A);

35. Recipient of funds designated under Title 23 U.S.C. or the Federal Transit Act—any agency at any level of state, county, city, or regional government that routinely receives Title 23 U.S.C. or Federal Transit Act funds to construct FHWA/FTA projects, operate FHWA/FTA projects or equipment, purchase equipment or undertake other services or operations via contracts or agreements. This definition does not include private landowners or developers, or contractors or entities that are only paid for services or products created by their own employees;

36. Regionally significant project—a transportation project (other than an exempt project) that is on a facility which serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals, as well as most terminals themselves) and would normally be included in the modeling of a metropolitan area's transportation network, including at a minimum:

A. All minor arterial and higher functionally

classified roadways; based on the MPO classification system; and

B. All fixed guideway transit facilities that offer an alternative to regional highway travel;

37. Standard—a national ambient air quality standard;

38. Statewide transportation improvement program (STIP)—a staged, multi-year, intermodal program of transportation projects which is consistent with the statewide transportation plan and planning processes and metropolitan transportation plans, TIPS and processes, developed pursuant to 23 CFR part 450;

39. Statewide transportation plan—the official statewide, intermodal transportation plan that is developed through the statewide transportation planning process, pursuant to 23 CFR part 450;

40. Submarginal area—any ozone nonattainment area which EPA has classified as submarginal in 40 CFR part 81;

41. Transit—mass transportation by bus, rail, or other conveyance which provides general or special service to the public on a regular and continuing basis. It does not include school buses or charter or sightseeing services;

42. Transit project—an undertaking to implement or modify a transit facility or transit-related program; purchase transit vehicles or equipment; or provide financial assistance for transit operations. It does not include actions that are solely within the jurisdiction of local transit agencies, such as changes in routes, schedules, or fares. It may consist of several phases. For analytical purposes, it must be defined inclusively enough to—

A. Connect logical *termini* and be of sufficient length to address environmental matters on a broad scope;

B. Have independent utility or independent significance, that is, be a reasonable expenditure even if no additional transportation improvements in the area are made; and

C. Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements;

43. Transitional area—any ozone nonattainment area

which EPA has classified as transitional in 40 CFR part 81;

44. Transitional period—with respect to a pollutant or pollutant precursor, that period of time which begins after submission to EPA of the relevant control strategy implementation plan which has been endorsed by the director, and has been subject to a public hearing. The transitional period lasts until EPA takes final approval or disapproval action on the control strategy implementation plan submission or finds it to be incomplete. The precise beginning and end of the transitional period is defined in section (24) of this rule;

45. Transportation control measure (TCM)—any measure that is specifically identified and committed to in the applicable implementation plan that is either one (1) of the types listed in section 108 of the CAA, or any other measure for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. Notwithstanding the above, vehicle technology-based, fuel-based, and maintenance-based measures which control the emissions from vehicles under fixed traffic conditions are not TCMs for the purposes of this rule;

46. Transportation improvement program (TIP)—a staged, multi-year, intermodal program of transportation projects covering a metropolitan planning area which is consistent with the metropolitan transportation plan, and developed pursuant to 23 CFR part 450;

47. Transportation plan—the official intermodal metropolitan transportation plan that is developed through the metropolitan planning process for the metropolitan planning area, developed pursuant to 23 CFR part 450;

48. Transportation project—a highway project or a transit project;

(2) Applicability.

(A) Action Applicability.

1. Except as provided for in subsection (2)(C) or section (30), conformity determinations are required for—

A. The adoption, acceptance, approval or support of transportation plans developed pursuant to 23 CFR part 450 or

49 CFR part 613 by an MPO or DOT;

B. The adoption, acceptance, approval or support of TIPs developed pursuant to 23 CFR part 450 or 49 CFR part 613 by an MPO or DOT; and

C. The approval, funding, or implementation of FHWA/FTA projects.

2. Conformity determinations are not required under this rule for individual projects which are not FHWA/FTA projects. However, section (25) applies to such projects if they are regionally significant.

(B) Geographic Applicability. The provisions of this rule shall apply in Franklin, Jefferson, St. Charles and St. Louis Counties and the City of St. Louis for ozone and ozone precursor emissions of volatile organic compounds and nitrogen oxides. The provisions of this rule shall apply in St. Louis City and that portion of St. Louis County extending north, south and west from the St. Louis City/County boundary to Interstate 270 for CO emissions.

(C) Limitations.

1. Projects subject to this rule for which the NEPA process and a conformity determination have been completed by FHWA or FTA may proceed toward implementation without further conformity determinations if one (1) of the following major steps has occurred within the most recent three (3)-year period: NEPA process completion; formal start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates. All phases of such projects which were considered in the conformity determination are also included, if those phases were for the purpose of funding, final design, right-of-way acquisition, construction, or any combination of these phases.

2. A new conformity determination for the project will be required if there is a significant change in project design concept and scope, if a supplemental environmental document for air quality purposes is initiated, or if no major steps to advance the project have occurred within the most recent three (3)-year period.

(3) Priority.

When assisting or approving any action with air quality-related consequences, FHWA and FTA shall give priority to the implementation of those transportation portions of an applicable implementation plan prepared to attain and maintain the NAAQS. This priority shall be consistent, with statutory requirements for allocation of funds among states or other jurisdictions.

(4) Frequency of Conformity Determinations.

(A) Conformity determinations and conformity redeterminations for transportation plans, TIPS, and FHWA/FTA projects must be made according to the requirements of this section and the applicable implementation plan.

(B) Transportation Plans.

1. Each new transportation plan must be found to conform before the transportation plan is approved by the MPO or accepted by DOT.

2. All transportation plan revisions must be found to conform before the transportation plan revisions are approved by the MPO or accepted by DOT, unless the revision merely adds or deletes exempt projects listed in section (30) and has been made in accordance with the notification provisions of subparagraph (5)(C)1.E. of this rule. The conformity determination must be based on the transportation plan and the revision taken as a whole.

3. The existing conformity determination will lapse unless conformity of existing transportation plans is redetermined—

A. By May 25, 1995 (unless previously redetermined in accordance with 40 CFR part 51 subpart T); or

B. Within eighteen (18) months of EPA approval of an implementation plan revision which—

(I) Establishes or revises a transportation-related emissions budget (as required by CAA sections 175A(a), 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), and 187(a)(7)); or

(II) Adds, deletes, or changes TCMS; and

C. Within eighteen (18) months of EPA promulgation of an implementation plan which establishes or revises a transportation-related emissions budget or adds, deletes, or changes TCMs.

4. In any case, conformity determinations must be made no less frequently than every three (3) years, or the existing conformity determination will lapse.

(C) Transportation Improvement Programs.

1. A new TIP must be found to conform before the TIP is approved by the MPO or accepted by DOT. The conformity determination must be completed in accordance with paragraph (5)(A)1. of this rule.

2. A TIP amendment requires a new conformity determination for the entire TIP before the amendment is approved by the MPO or accepted by DOT, unless the amendment merely adds or deletes exempt projects listed in section (30) and has been made in accordance with the notification provisions of subparagraph (5)(C)1.E. of this rule. Any new conformity determination for a TIP amendment must be completed in accordance with paragraph (5)(A)1. of this rule.

3. After the MPO adopts a new or revised transportation plan, conformity of the TIP must be redetermined by the MPO and DOT within six (6) months from the date of adoption of the plan, unless the new or revised plan merely adds or deletes exempt projects listed in section (30) and has been made in accordance with the notification provisions of subparagraph (5)(C)1.E. of this rule. Otherwise, the existing conformity determination for the TIP will lapse.

4. In any case, conformity determinations must be made no less frequently than every three (3) years or the existing conformity determination will lapse.

(D) Projects. FHWA/FTA projects must be found to conform before they are adopted, accepted, approved, or funded. Conformity must be redetermined for any FHWA/FTA project if none of the following major steps has occurred within the most recent three (3)-year period: NEPA process completion; formal start of

final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates.

(5) Consultation.

(A) General. This section provides procedures for interagency consultation (federal, state and local) and resolution of conflicts related to conformity determinations and the development of implementation plans, as required pursuant to 40 CFR parts 51 and 93.

1. Such consultation procedures shall be undertaken by the MPO and state and federal transportation agencies with federal, state and local air quality agencies before making conformity determinations.

2. Such consultation procedures shall be undertaken by federal, state and local air quality agencies with the MPO and state and federal transportation agencies in developing the transportation-related provisions of applicable implementation plans. Such procedures shall be consistent with and shall not be duplicative of procedures established under section 174 of the CAA.

(B) Interagency Consultation Procedures: General Factors.

1. Representatives of the MPO, state and local air quality planning agencies, state and local transportation agencies shall undertake an interagency consultation process in accordance with this section with each other and with local or regional offices of the EPA, FHWA and FTA on the development of the implementation plan, the list of TCMs in the applicable implementation plan, the unified planning work program under 23 CFR section 450.314, the transportation plan, the TIP, any revisions to the preceding documents, and all conformity determinations required by this rule.

2. The state air quality agency shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process as required by this section with respect to the development of the applicable implementation plans and control strategy implementation plan revisions and the list of TCMs in the applicable implementation plan. The MPO shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation

process as required by this section with respect to the development of the unified planning work program under 23 CFR section 450.314, the transportation plan, the TIP, and any amendments or revisions thereto. The MPO shall also be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process as required by this section with respect to any determinations of conformity under this rule for which the MPO is responsible.

3. In addition to the lead agencies identified in paragraph (5)(B)2., other agencies entitled to participate in any interagency consultation process under this rule include:

A. The Illinois Department of Transportation, the Missouri Department of Highways and Transportation, the Federal Highway Administration, the Federal Transit Administration, the U.S. Environmental Protection Agency, the Illinois Environmental Protection Agency and the Missouri Department of Natural Resources;

B. Local transportation agencies through the appointment of one (1) representative from local transportation agency interests on the Illinois side of the St. Louis area and the appointment of one (1) representative from local transportation agency interests on the Missouri side of the St. Louis area. The MPO and the Illinois Department of Transportation shall jointly appoint the Illinois representative, and the MPO and Missouri Department of Highways and Transportation shall jointly appoint the Missouri representative;

C. Local air quality agencies through the appointment of one (1) representative from each of the two (2) local air quality agencies. The MPO and the Missouri Department of Natural Resources shall jointly appoint the local air quality agency representatives; and

D. Local mass transit agencies through the appointment of one (1) representative from local mass transit agency interests on the Illinois side of the St. Louis area and the appointment of one (1) representative from local mass transit agency interests on the Missouri side of the St. Louis area. The MPO and the Illinois Department of Transportation shall jointly

appoint the Illinois representative, and the MPO and Missouri Department of Highways and Transportation shall jointly appoint the Missouri representative.

E. Nothing in this paragraph shall preclude the authority of the lead agency listed in paragraph (5)(B)2. to involve additional agencies in the consultation process which are directly impacted by any project or action subject to this rule.

F. Representatives appointed under subparagraphs (5)(B)3.B., C., D., or E. shall not come from an agency already represented as a consulting agency under this section.

4. It shall be the responsibility of the appropriate lead agency designated in paragraph (5)(B)2. to solicit early and continuing input from all other consulting agencies, to provide those agencies with all relevant information needed for meaningful input and, where appropriate, to assure policy-level contact with those agencies. The lead agency shall, at a minimum, provide opportunities for discussion and comment in accordance with the interagency consultation procedures detailed in this section. The lead agency shall consider the views of each other consulting agency prior to making a final decision, shall respond in writing to those views and shall assure that such views and response (or where appropriate a summary thereof) are made part of the record of any decision or action.

5. It shall be the responsibility of each agency listed in paragraph (5)(B)3. (other than the lead agency designated under paragraph (5)(B)2.) to confer with the lead agency and the other participants in the consultation process, to review and make relevant comment on all proposed and final documents and decisions in a timely manner and to attend consultation and decision meetings. To the extent requested by the lead agency or other agencies involved, or as required by other provisions of this rule, each agency shall provide timely input on any area of substantive expertise or responsibility (including planning assumptions, modeling, information on status of TCM implementation, and interpretation of regulatory or other requirements), and shall comply with any reasonable request to render such technical assistance to the lead agency as may be needed to support the development of the document or decision.

6. For documents or decisions subject to this rule for which the MPO is the designated lead agency, the MPO shall, through the regular meetings of its board of directors and committees, be the primary forum for discussion at the policy

level. The MPO shall ensure that all consulting agencies are provided with opportunity to participate throughout the decision-making process including the early planning stages. The MPO shall modify or supplement its normal schedule of meetings, if needed, to provide adequate opportunity for discussion of the matters subject to this rule.

7. It shall be the responsibility of the lead agency designated under paragraph (5)(B)2. to initiate the consultation process by notifying other consulting agencies of the following:

A. The decision(s) or document(s) for which consultation is being undertaken; and

B. The proposed planning or programming process for the development of the decision(s) or document(s). The proposed planning or programming process shall include at a minimum:

(I) The roles and responsibilities of each agency at each stage in the planning process, including technical as well as policy aspects;

(II) The organizational level of regular consultation;

(III) The proposed schedule of, or process for convening, consultation meetings, including the process and assignment of responsibilities for selecting a chairperson and setting meeting agendas;

(IV) The process for circulating or otherwise making available all relevant materials in a timely, fashion at each stage in the consultation process, and in particular for circulating or otherwise making available drafts of proposed documents or decisions before formal adoption or publication;

(V) The process and assignment of responsibility for maintaining an adequate record of the consultation process; and

(VI) The process for responding to the significant comments of involved agencies.

C. The consultation planning and programming process to be followed for each document or decision subject to this rule shall be determined by consensus among the consulting agencies and shall thereafter be binding on all parties until such time as it may be revised by consensus among the consulting agencies.

8. All drafts and supporting materials subject to consultation shall be provided at such level of detail as each consulting agency may need to determine its response. Any consulting agency may request, and the appropriate lead agency shall supply, supplemental information as is reasonably available for the consulting agency to delete its response.

9. The time allowed at each stage in the consultation process shall not be less than that specified by regulation or this rule, published by the lead agency in any document describing the consultation procedures to be followed under 23 CFR part 450, 40 CFR part 51 or this rule, or otherwise previously agreed by consensus of the consulting agencies. Where no such time has been specified, published or agreed to, the time shall be determined by consensus of the consulting agencies based upon the amount of material subject to consultation, the extent of prior informal or technical consultation and discussion, the nature of the decision to be made, and such other factors as are previously agreed by the consulting agencies. The time allowed for consultation shall be the same for all agencies being consulted, and any extension of time granted to one (1) agency shall also be allowed all other agencies.

10. Determining the adequacy of consultation opportunities.

A. Representatives of the consulting agencies listed in paragraph (5)(B)3. shall meet once each calendar year for the purpose of reviewing the sequence and adequacy of the consultation planning and programming processes established or proposed under paragraph (5)(B)7. for each type of document or decision. Responsibility for convening this meeting shall rest with the appropriate lead agency designated in paragraph (5)(B)2.

B. In any year (other than the first after the adoption of this rule) in which there is an agreed upon consultation planning or programming process in effect and no consulting agency has requested any change to that process, the appropriate lead agency may propose that this process remain in effect. Upon notification of acceptance of this proposal by all

consulting agencies, no further action by the lead agency shall be required and the meeting and review required under subparagraph (5)(B)10.A. need not take place for that year.

11. The consultation planning and programming processes proposed and agreed to under paragraph (5)(B)7. shall comply with the following general principles:

A. Consultation shall be held early in the planning process, so as to facilitate sharing of information needed for meaningful input and to allow the consulting agencies to confer with the lead agency during the formative stages of developing any documents or decision subject to this rule;

B. For conformity determinations for Transportation Plan Revisions or TIPS, the consultation process shall, at a minimum, specifically include opportunities for the consulting agencies to confer upon the analysis required to make conformity determinations. This consultation shall normally take place at the technical level, except to the extent agreed by consensus under paragraph (5)(B)10., and shall take place prior to the consideration of draft documents or conformity determinations by the MPO;

C. For state implementation plans, the consultation process shall, at a minimum, specifically include opportunities for the consulting agencies to confer upon the motor vehicle emissions budget. This consultation shall take place at the technical and policy levels, except to the extent agreed by consensus under paragraph (5)(B)10., and shall take place prior to the consideration of the draft budget by the state air quality agency;

D. In addition to the requirements of subparagraphs (5)(B)11.B. and C., if TCMs are to be considered in transportation plans, TIPS or state implementation plans, specific opportunities to consult regarding TCMs by air quality and transportation agencies must be provided prior to the consideration of the TCMs by the appropriate lead agency; and

E. Additional consultation opportunities must be provided prior to any final action being taken by any of the lead agencies defined in paragraph (5)(B)2. on any document or decision subject to this rule. Before taking formal action to approve any plan, program, document or other decision subject to this rule, the consulting agencies shall be given an opportunity to communicate their views in writing to the lead agency. The

lead agency shall consider those views and respond in writing in a timely and appropriate manner prior to any final action. Such views and written response shall be made part of the record of the final decision or action. Opportunities for formal consulting agency comment may run concurrently with other public review time frames.

12. Consultation on planning assumptions.

A. The MPO shall convene a meeting of the consulting agencies listed in paragraph (5)(B)3. no less frequently than once each calendar year for the purpose of reviewing the planning, transportation and air quality assumptions, and models and other technical procedures in use or proposed to be used for the state implementation plan (SIP) motor vehicle emissions inventory, motor vehicle emissions budget, and conformity determinations. This meeting shall normally take place at the technical level except to the extent agreed by consensus under paragraph (5)(B)10.

B. In all years when it is intended to determine the conformity of a transportation plan revision or TIP, the meeting required in subparagraph (5)(B)12.A. shall be held before the MPO commences the evaluation of projects submitted or proposed for inclusion in the transportation plan revision or TIP, and before the annual public meeting held in accordance with 23 CFR section 450.322(c). The MPO shall consider the views of all consulting agencies before making a decision on the latest planning assumptions to be used for conformity determinations. The state air quality agencies shall consider the views of all consulting agencies before making a decision on the latest planning assumptions to be used for developing the SIP motor vehicle emissions inventory, motor vehicle emissions budget and for estimating the emissions reductions associated with TCMS.

C. It shall be the responsibility of each of the consulting agencies to advise the MPO of any pending changes to their planning assumptions or methods and procedures used to estimate travel, forecast travel demand, or estimate motor vehicle emissions. Where necessary the MPO shall convene meetings, additional to that required under subparagraph (5)(B)12.A., to share information and evaluate the potential impacts of any proposed changes in planning assumptions, methods

or procedures and to exchange information regarding the timetable and scope of any upcoming studies or analyses that may lead to future revision of planning assumptions, methods or procedures.

D. Whenever a change in air quality or transportation planning assumptions, methods or procedures is proposed that may have a significant impact on the SEP motor vehicle emissions inventory, motor vehicle emissions budget or conformity determinations, the agency proposing the change shall provide the consulting agencies an opportunity to review the basis for the proposed change. All consulting agencies shall be given at least (30) days to evaluate the impact of the proposed change prior to final action by the agency proposing the change. To the fullest extent practicable, the time frame for considering and evaluating proposed changes shall be coordinated with the procedures for consultation on planning assumptions in subparagraphs (5)(B)12.A.—C.

13. A meeting that is scheduled or required for another purpose may be used for the purposes of consultation if the consultation purpose is identified in the public notice for the meeting and all consulting agencies are notified in advance of the meeting.

14. On any matter which is the subject of consultation, no consulting agency may make a final decision or move to finally approve a document subject to this rule until the expiry of the time allowed for consultation and the completion of of the process notified under paragraph (5)(B)7. Notwithstanding the previous sentence, any consulting agency may make a final decision or move to finally approve a document subject to this rule if final comments on the draft document or decision have been received from all other consulting agencies. The lead agency designated under paragraph (5)(B)2. shall, in making its decision, take account of all views expressed in response to consultation.

(C) Interagency Consultation Procedures: Specific Processes.

1. An interagency consultation process in accordance with subsection (5)(B) involving the MPO, state and local air quality planning agencies, state and local transportation agencies, the EPA and the DOT shall be undertaken for the following. Except where otherwise provided, the MPO shall be responsible for initiating the consultation process.

A. Evaluating and choosing each model(s) and associated methods and assumptions to be used in regional emissions and hot-spot analyses and the forecasting of vehicle miles of travel, in accordance with the requirements of sections (11) and (26) of this rule.

B. Determining which other projects in addition to those functionally classified as minor arterial or higher should be considered regionally significant for the purpose of regional emissions analysis (in addition to fixed guideway systems or extensions that offer an alternative to regional highway travel) and for determining which projects should be considered to have a significant change in design concept and scope from the transportation plan or TIP.

C. Evaluating whether projects otherwise exempted from meeting the requirements of this rule under section (30) or (31) should be treated as nonexempt in cases where potential adverse emissions impacts may exist for any reason.

D. Making a determination whether past obstacles to implementation of TCMs which are behind the schedule established in the applicable implementation plan have been identified and are being overcome, and whether state and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding for TCMs over other projects within their control. This consultation process shall also consider whether delays in TCM implementation necessitate revisions to the applicable implementation plan to remove TCMs or substitute TCMs or other emission reduction measures.

E. Notifying all consulting agencies of transportation plan or TIP revisions or amendments which merely add or delete exempt projects listed in section (30) or (31). In any year when it is intended to prepare a transportation plan revision, TIP or TIP amendment that merely adds or deletes exempt projects, the MPO shall notify all consulting agencies in writing within seven (7) calendar days after taking action to approve such exempt projects. The notification shall include enough information about the exempt projects for the consulting agencies to determine their agreement or disagreement that the projects are exempt under section (30) or (31) of this rule.

F. Determining whether a project is considered to be included in the regional emissions analysis supporting the currently conforming TIP's conformity determination, even if the

project is not strictly included in the TIP for the purposes of MPO project selection or endorsement, and whether the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility.

G. Advising on the horizon years to be used for conformity determinations, in accordance with section (6) of this rule.

H. Advising whether the modeling methods and functional relationships used in the model are consistent with acceptable professional practice and are reasonable for the purposes of emission estimation, as specified in section (26) of this rule.

I. Reviewing the models, databases and other requirements specified in section (27) of this rule and advising if there are grounds for recommending to the EPA regional administrator that these models, databases or requirements are inappropriate. In such an event, the consulting agencies shall propose alternative methods to satisfy the requirements for conformity in accordance with section (27).

J. Determining what forecast of vehicle miles traveled to use in establishing or tracking motor vehicle emissions budgets, developing transportation plans, TIPs or applicable implementation plans, or in making conformity determinations.

K. Determining whether the project sponsor or the MPO has demonstrated that the requirements of sections (16)—(18) are satisfied without a particular mitigation or control measure, as provided in subsection (29).

L. Developing a list of TCMs to be included in the applicable implementation plan.

2. An interagency consultation process in accordance with subsection (5)(B) involving the MPO, state and local air quality planning agencies and state and local transportation agencies shall be undertaken for the following. Except where otherwise provided, the MPO shall be responsible for initiating the consultation process.

A. Evaluating events which will trigger new conformity determinations in addition to those triggering events

established in section (4). Any of the consulting agencies listed in paragraph (5)(B)3. may request that the MPO initiate the interagency consultation process to evaluate an event which should, in the opinion of the consulting agency, trigger a need for a conformity determination. The MPO shall initiate appropriate consultation with the other consulting agencies in response to such request, and shall notify the consulting agencies and the requesting agency in writing of its proposed action in response to this evaluation and consultation.

B. Consulting on the procedures to be followed in performing emissions analysis for transportation activities which cross the borders of the MPO's region or the St. Louis nonattainment area or air basin.

3. Consultation on nonfederal projects.

A. An interagency consultation process in accordance with subsection (5)(B) involving the MPO, state and local air quality agencies and state and local transportation agencies shall be undertaken to ensure that plans for construction of regionally significant projects which are not FHWA/FTA projects (including projects for which alternative locations, design concept and scope, or the no-build option are still being considered), including all those by recipients of funds designated under 23 U.S.C. or the Federal Transit Act, are disclosed to the MPO on a regular basis, and to assure that any changes to those plans are immediately disclosed.

B. Notwithstanding the provisions of subparagraph (5)(C)3.A., it shall be the responsibility of the sponsor of any such regionally significant project, and of any agency that becomes aware of any such project through applications for approval, permitting or funding, to disclose such project to the MPO in a timely manner. Such disclosure shall be made not later than the first occasion on which any of the following actions is sought: any policy board action necessary for the project to proceed, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract to design or construct the facility, the execution of any indebtedness for the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with design, permitting or collection of the project, or the execution of any contract to design or construct or any approval needed for any facility that is dependent on the completion of the regionally significant project.

C. Any such regionally significant project that has not been disclosed to the MPO in a timely manner shall be deemed not to be included in the regional emissions analysis supporting the conformity determination for the TIP and shall not be consistent with the motor vehicle emissions budget in the applicable implementation plan, for the purposes of section (25) of this rule.

D. For the purposes of this section and of section (25) of this rule, the phrase adopt or approve of a regionally significant project means the first time any action necessary to authorizing a project occurs, such as any policy board action necessary for the project to proceed, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract to construct the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with construction of the project, or any written decision or authorization from the MPO that the project may be adopted or approved.

4. An interagency consultation process involving the agencies specified in paragraph (5)(B)3. shall be undertaken for assuming the location and design concept and scope of projects which are disclosed to the MPO as required by paragraph (5)(C)3. but whose sponsors have not yet decided these features in sufficient detail to perform the regional emissions analysis according to the requirements of section (26) of this rule. This process shall be initiated by the MPO.

5. The MPO shall undertake an on-going process of consultation with the agencies listed in paragraph (5)(B)3. for the design, schedule, and funding of research and data collection efforts and regional transportation model development by the MPO. This process shall, as far as practicable, be integrated with the cooperative development of the Unified Planning Work Program under 23 CFR section 450.314.

(D) Recordkeeping and Distribution of Final Documents.

1. It shall be the responsibility of the lead agency designated under paragraph (5)(B)2. to maintain a complete and accurate record of all agreements, planning and programming processes, and consultation activities required under this rule and to make these documents available for public inspection upon request.

2. It shall be the affirmative responsibility of the lead agency designated under paragraph (5)(B)2. to provide to the other consulting agencies copies of any final document or final decision subject to this rule within thirty (30) days of final action by the lead agency.

(E) Resolving Conflicts.

1. Conflicts among state agencies or between state agencies and the MPO regarding a final action on any conformity determination subject to this rule shall be escalated to the governor if the conflict cannot be resolved by the heads of the involved agencies. Such agencies shall make every effort to resolve any differences, including personal meetings between the heads of such agencies or their policy-level representatives, to the extent possible.

2. It shall be the responsibility of the state air quality agency to provide timely notification to the MPO and other consulting agencies of any proposed conformity determination where the agency identifies a potential conflict which, if unresolved, would, in the opinion of the agency, justify escalation to the governor. To the extent that consultation is not otherwise required under this rule, the state air quality agency shall consult with the other agencies listed in paragraph (5)(B)3. in advance of escalating a potential conflict to the governor, and, if necessary, shall convene the meetings required under paragraph (5)(E)1. of this rule.

3. When the MPO intends to make a final determination of conformity for a transportation plan, plan revision, TIP or TIP amendment, the MPO shall first notify the director of the state air quality agency of its intention and include in that notification a written response to any comments submitted by the state air quality agency on the proposed conformity determination. Upon receipt of such notification (including the written response to any comments submitted by the state air quality agency), the state air quality agency shall have fourteen (14) calendar days in which to appeal a proposed determination of conformity to the governor. If the Missouri air quality agency appeals to the governor of Missouri, the final conformity determination will automatically become contingent upon concurrence of the governor of Missouri. If the Illinois air quality agency presents an appeal to the governor of Missouri regarding a conflict involving both Illinois and Missouri agencies or the MPO, the final conformity determination will automatically become contingent upon concurrence of both the

governor of Missouri and the governor of Illinois. The state air quality agency shall provide notice of any appeal under this subsection to the MPO, the state transportation agency and the Illinois air quality agency. If neither state air quality agency appeals to the governor(s) within fourteen (14) days of receiving written notification, the MPO may proceed with the final conformity determination.

4. The governor may delegate the role of hearing any such appeal under this subsection and of deciding whether to concur in the conformity determination to another official or agency within the state, but not to the head or staff of the state air quality agency or any local air quality agency, the state department of transportation, a state transportation commission or board, any agency that has responsibility for only one (1) of these functions, or an MPO.

(F) Interagency Consultation Procedures: Public Involvement.

1. The MPO shall establish and implement a proactive public involvement process which provides opportunity for public review and comment prior to taking formal action on a conformity determination for a transportation plan revision or a TIP. This process shall be consistent with the requirements of 23 CFR part 450, including sections 450.316(b)(1), 450.322(c) and 450.324(c).

2. The public involvement process may be fully integrated with the public involvement process for transportation plans and TIPs publicized under 23 CFR section 450.316(b)(1)(i) or may be established independently. In the case of an independent procedure, there shall be a minimum public comment period of forty-five (45) days before the public involvement process is initially adopted or revised. In either case, the following criteria shall apply:

A. The MPO shall provide timely information about the conformity process to interested parties and segments of the community potentially affected by conformity determinations or by programs and policies proposed to ensure conformity, and to the public in general;

B. The public shall be assured reasonable access to technical and policy information used in the development of the conformity determination;

C. The MPO shall ensure adequate public notice of public involvement activities and shall allow time for public review and comment at key decision points including, but not limited to, any proposed determination of conformity;

D. The MPO shall demonstrate explicit consideration and response to public input received during the conformity determination process. When significant written and oral comments are received on a proposed determination of conformity as a result of the public involvement process, a summary, analysis and report on the disposition of comments shall be made part of the final conformity determination; and

E. The MPO shall specifically address in writing all public comments that known plans for a regionally significant project which is not receiving FHWA or FTA funding or approval have not been properly reflected in the emissions analysis supporting a proposed conformity finding for a transportation plan or TIP.

3. The MPO and other agencies involved in conformity determinations shall also provide opportunity for public involvement in conformity determinations for projects to the extent otherwise required by law.

4. At such times as the MPO proposes to adopt or revise the public involvement process under paragraph (5)(F)2., the MPO shall consult with the agencies listed in paragraph (5)(B)3. on that public involvement process as it relates to conformity determinations. A minimum of forty-five (45) days shall be allowed for these agencies to respond. The MPO shall consider all comments made by the consulting agencies and shall provide each agency with a written statement of its response before moving to adopt the revised public involvement process.

5. In the first year after the adoption of this rule, if there is an approved public involvement process in force and the MPO has not proposed to revise that process, any consulting agency may request such a revision. The MPO shall consider this request and provide a written statement of its response to the requesting agency and other interested parties.

(6) Content of Transportation Plans.

(A) Transportation Plans Adopted After January 1, 1995, In Serious, Severe, or Extreme Ozone Nonattainment Areas and in Serious Carbon Monoxide Nonattainment Areas. The transportation

plan must specifically describe the transportation system envisioned for certain future years which shall be called horizon years.

1. The agency or organization developing the transportation plan, after consultation in accordance with section (5), may choose any years to be horizon years, subject to the following restrictions:

A. Horizon years may be no more than ten (10) years apart;

B. The first horizon year may be no more than ten (10) years from the base year used to validate the transportation demand planning model;

C. If the attainment year is in the time span of the transportation plan, the attainment year must be a horizon year; and

D. The last horizon year must be the last year of the transportation plan's forecast period.

2. For these horizon years—

A. The transportation plan shall quantify and document the demographic and employment factors influencing expected transportation demand, including land use forecasts, in accordance with implementation plan provisions and section (5);

B. The highway and transit system shall be described in terms of the regionally significant additions or modifications to the existing transportation network which the transportation plan envisions to be operational in the horizon years. Additions and modifications to the highway network shall be sufficiently identified to indicate intersections with existing regionally significant facilities, and to determine their effect on route options between transportation analysis zones. Each added or modified highway segment shall also be sufficiently identified in terms of its design concept and design scope to allow modeling of travel times under various traffic volumes, consistent with the modeling methods for area wide transportation analysis in use by the MPO. Transit facilities, equipment, and services envisioned for the future shall be identified in terms of design concept, design scope, and operating policies sufficiently to allow modeling of their transit ridership. The description of additions and

modifications to the transportation network shall also be sufficiently specific to show that there is a reasonable relationship between expected land use and the envisioned transportation system; and

C. Other future transportation policies, requirements, services, and activities, including intermodal activities, shall be described.

(B) Moderate Areas Reclassified to Serious. Ozone or CO nonattainment areas which are reclassified from moderate to serious must meet the requirements of subsection (6)(A) within two (2) years from the date of reclassification.

(C) Transportation Plans for Other Areas. Transportation plans for other areas must meet the requirements of subsection (6)(A) at least to the extent it has been the previous practice of the MPO to prepare plans which meet those requirements. Otherwise, transportation plans must describe the transportation system envisioned for the future specifically enough to allow determination of conformity according to the criteria and procedures of sections (9)—(23).

(D) Savings. The requirements of this section supplement other requirements of applicable law or regulation governing the format or content of transportation plans.

(7) Relationship of Transportation Plan and TIP Conformity With the NEPA Process.

The degree of specificity required in the transportation plan and the specific travel network assumed for air quality modeling do not preclude the consideration of alternatives in the NEPA process or other project development studies. Should the NEPA process result in a project with design concept and scope

significantly different from that in the transportation plan or TIP, the project must meet the criteria in sections (9)—(23) for projects not from a TIP before NEPA process completion.

(8) Fiscal Constraints for Transportation Plans and TIPS.

Transportation plans and TIPS shall be fiscally constrained and meet the requirements of 23 CFR 450.322(b)(11) and 450.324(e) as in effect on the date of adoption of this rule in order to be found in conformity. The determination that a transportation plan or TIP is fiscally constrained shall be subject to consultation in accordance with section (5) of this rule.

(9) Criteria and Procedures for Determining Conformity of Transportation Plans, Programs, and Projects: General.

(A) To be found to conform, each transportation plan, program, and FHWA/FTA project must satisfy the applicable criteria and procedures in sections (10)—(23) as listed in Table 1 in subsection (9)(B), and must comply with all applicable conformity requirements of implementation plans and this rule and of court orders for the area which pertain specifically to conformity determination requirements. The criteria for making conformity determinations differ based on the action under review (transportation plans, TIPS, and FHWA/FTA projects), the time period in which the conformity determination is made, and the relevant pollutant.

(B) The following table indicates the criteria and procedures in sections (10)—(23) which apply for each action in each time period.

Table 1. Conformity Criteria

During all periods:

Action	Criteria
Transportation Plan	Sections (10), (11), (12), (13)(B)
TIP	Sections (10), (11), (12), (13)(C)
Project (From a conforming plan and TIP)	Sections (10), (11), (12), (14), (15), (16)
Project (Not from a conforming plan and TIP)	Sections (10), (11), (12), (13)(D), (14), (16)

Phase II of the interim period:

Action	Criteria
Transportation Plan	Section (21)
TIP	Section (22)
Project (From a conforming plan and TIP)	Section (20)
Project (Not from a conforming plan and TIP)	Section (20),(23)

Transitional period:

Action	Criteria
Transportation Plan	Sections (17),(21)
TIP	Sections (18),(22)
Project (From a conforming plan and TIP)	Section (20)
Project (Not from a conforming plan and TIP)	Sections (19),(20),(23)

Control strategy and maintenance periods:

Action	Criteria
Transportation Plan	Section (17)
TIP	Section (18)
Project (From a conforming plan and TIP)	No additional criteria
Project (Not from a conforming plan and TIP)	Section (19)

(10) Criteria and Procedures: Latest Planning Assumptions.

(A) During all periods the conformity determination, with respect to all other applicable criteria in sections (11)—(23), shall be based upon the most recent planning assumptions in force at the time of the conformity determination. The conformity determination must satisfy the requirements of subsections (10)(B)—(F).

(B) Assumptions (including, but not limited to, vehicle miles traveled per capita or per household or per vehicle, trip generation per household, vehicle occupancy, household size, vehicle fleet mix, vehicle ownership, and the geographic distribution of population growth) must be derived from the estimates of current and future population, employment, travel, and congestion most recently developed by the MPO. The conformity determination must also be based on the latest assumptions about current and future background concentrations. Any revisions to these estimates used as part of the conformity

determination, including projected shifts in geographic location or level of population, employment, travel, and congestion, must be approved by the MPO, and shall be subject to consultation in accordance with section (5).

(C) The conformity determination for each transportation plan and TIP must discuss how transit operating policies (including fares and service levels) and assumed transit ridership have changed since the previous conformity determination.

(D) The conformity determination must include reasonable assumptions about transit service and increases in transit fares and road and bridge tolls over time.

(E) The conformity determination must use the latest existing information regarding the effectiveness of the TCMs which have already been implemented.

(F) Key assumptions shall be specified and included in the draft documents and supporting materials used for the interagency and public consultation required by section (5).

(11) Criteria and Procedures: Latest Emissions Model.

(A) During all periods the conformity determination shall be based on the latest emission estimation model available. This criterion is satisfied if the most current version of the motor vehicle emissions model specified by EPA for use in the preparation or revision of implementation plans in the state or area is used for the conformity analysis.

(B) Conformity analyses for which the emissions analysis was begun before the *Federal Register* notice of availability of the latest emission model, or during the grace period announced in such notice, may continue to use the previous version of the model for transportation plans and TIPS. The previous model may also be used for projects if the analysis was begun during the grace period or before the *Federal Register* notice of availability, provided no more than three (3) years have passed since the draft environmental document was issued.

(12) Criteria and Procedures: Consultation.

All conformity determinations shall be made according to the consultation procedures in this rule, and according to the public

involvement procedures established by the MPO in compliance with 23 CFR part 450. This criterion applies during all periods. Once the implementation plan revision has been submitted to EPA, this criterion is satisfied if the conformity determination is made consistent with the implementation plan's consultation requirements.

(13) Criteria and Procedures: Timely Implementation of TCMS.

(A) During all periods the transportation plan, TIP, or any FHWA/FTA project which is not from a conforming plan and TIP must provide for the timely implementation of TCMS from the applicable implementation plan.

(B) For transportation Plans, this criterion is satisfied if the following two (2) conditions are met:

1. The transportation plan, in describing the envisioned future transportation system, provides for the timely completion or implementation of all TCMS in the applicable implementation plan which are eligible for funding under Title 23 U.S.C. or the Federal Transit Act, consistent with schedules included in the applicable implementation plan; and

2. Nothing in the transportation plan interferes with the implementation of any TCM in the applicable implementation plan.

(C) For TIPS, this criterion is satisfied if the following conditions are met:

1. An examination of the specific steps and funding source(s) needed to fully implement each TCM indicates that TCMS which are eligible for funding under Title 23 U.S.C. or the Federal Transit Act, are on or ahead of the schedule established in the applicable implementation plan, or, if such TCMS are behind the schedule established in the applicable implementation plan, the MPO and DOT have determined that past obstacles to implementation of the TCMS have been identified and have been or are being overcome, and that all state and local agencies with influence over approvals or funding for TCMS are giving maximum priority to approval or funding of TCMS over other projects within their control, including projects in locations outside the nonattainment or maintenance area. Maximum priority to approval or funding of TCMS includes demonstrations with respect to

funding acceleration, commitment of staff or other agency resources, diligent efforts to seek approvals, and similar actions.

2. If federal funding intended for TCMs in the applicable implementation plan has previously been programmed but is reallocated to projects in the TIP other than TCMs (or if there are no other TCMs in the TIP, to projects in the TIP other than projects which are eligible for federal funding under ISTEA's Congestion Mitigation and Air Quality Improvement Program), and the TCMs are behind the schedule in the implementation plan, then the TIP cannot be found to conform.

3. Nothing in the TIP interferes with the implementation of any TCM in the applicable implementation plan.

(D) For FHWA/FTA projects which are not from a conforming transportation plan and TIP, this criterion is satisfied if the project does not interfere with the implementation of any TCM in the applicable implementation plan.

(14) Criteria and Procedures: Currently Conforming Transportation Plan and TIP.

There must be a currently conforming transportation plan and currently conforming TIP at the time of project approval. This criterion applies during all periods. It is satisfied if the current transportation plan and TIP have been found to conform to the applicable implementation plan by the MPO and DOT according to the procedures of 40 CFR part 51 subpart T.

(A) Only one (1) conforming transportation plan or TIP may exist in an area at any time; conformity determinations of a previous transportation plan or TIP expire once the current plan or TIP is found to conform by DOT. The conformity determination on a transportation plan or TIP will also lapse if conformity is not determined according to the frequency requirements of section (4) of this rule.

(B) This criterion is not required to be satisfied at the time of project approval for TCM specifically included in the applicable implementation plan, provided that all other relevant criteria of 40 CFR part 51 subpart T are satisfied.

(15) Criteria and Procedures: Projects From a Plan and TIP.

(A) During all periods the project must come from a conforming transportation plan and TIP. If this criterion is not satisfied, the project must satisfy all criteria in Table 1 of section (9) for a project not from a conforming transportation plan and TIP. A project is considered to be from a conforming transportation plan if it meets the requirements of subsection (15)(B) of this rule and from a conforming TIP if it meets the requirements of subsection (15)(C) of this rule. Special provisions for TCMs in an applicable implementation plan are provided in subsection (15)(D) of this rule.

(B) A project is considered to be from a conforming transportation plan if one (1) of the following conditions applies:

1. For projects which are required to be identified in the transportation plan in order to satisfy section (6) of this rule, the project is specifically included in the conforming transportation plan and the project's design concept and scope have not changed significantly from those which were described in the transportation plan, or in a manner which would significantly impact use of the facility; or

2. For projects which are not required to be specifically identified in the transportation plan, the project is identified in the conforming transportation plan, or is consistent with the policies and purpose of the transportation plan and will not interfere with other projects specifically included in the transportation plan.

(C) A project is considered to be from a conforming TIP if the following conditions are met:

1. The project is included in the conforming TIP and the design concept and scope of the project were adequate at the time of the TIP conformity determination to determine its contribution to the TIP's regional emissions and have not changed significantly from those which were described in the TIP, or in a manner which would significantly impact use of the facility; and

2. If the TIP describes a project design concept and scope which includes project-level emissions mitigation or control measures, enforceable written commitments to implement such measures must be obtained from the project sponsor or operator as required by subsection (29)(A) in order for the

project to be considered from a conforming TIP. Any change in these mitigation or control measures that would significantly reduce their effectiveness constitutes a change in the design concept and scope of the project.

(D) TCMS. This criterion is not required to be satisfied for TCMS specifically included in an applicable implementation plan.

(16) Criteria and Procedures: Localized CO Violations (Hot Spots).

(A) During all periods the FHWA/FTA project must not cause or contribute to any new localized CO violations or increase the frequency or severity of any existing CO violations in CO nonattainment and maintenance areas. This criterion is satisfied if it is demonstrated that no new local violations will be created and the severity or number of violations will not be increased as a result of the project.

(B) The demonstration must be performed according to the requirements of sections (5) and (27).

(C) For projects which are not of the type identified by subsection (27)(A), this criterion may be satisfied if consideration of local factors clearly demonstrates that no local violations presently exist and no new local violations will be created as a result of the project. Otherwise, in CO nonattainment and maintenance areas, a quantitative demonstration must be performed according to the requirements of subsection (27)(B).

(17) Criteria and Procedures: Motor Vehicle Emissions Budget (Transportation Plan).

(A) The transportation plan must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in section (32). This criterion may be satisfied if the requirements in subsections (17)(B) and (C) are met.

(B) A regional emissions analysis shall be performed as follows:

1. The regional analysis shall estimate emissions of any of the following pollutants and pollutant precursors for which the area is in nonattainment or maintenance and for which the applicable implementation plan (or implementation plan submission) establishes an emissions budget:

- A. VOC as an ozone precursor;
- B. NOx as an ozone precursor; or
- C. CO;

2. The regional emissions analysis shall estimate emissions from the entire transportation system, including all regionally significant projects contained in the transportation plan and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the time frame of the transportation plan;

3. The emissions analysis methodology shall meet the requirements of section (26);

4. For areas with a transportation plan that meets the content requirements of subsection (6)(A) of this rule, the emissions analysis shall be performed for each horizon year. Emissions in milestone years which are between the horizon years may be determined by interpolation; and

5. For areas with a transportation plan that does not meet the content requirements of subsection (6)(A) of this rule, the emissions analysis shall be performed for—

- A. The last year of the plan's forecast period;
- B. The attainment year, if the attainment year is in the time span of the transportation plan; and
- C. Any other years in the time span of the transportation plan that are no more than ten (10) years apart. Emissions in milestone years which are between these analysis years may be determined by interpolation.

(C) The regional emissions analysis shall demonstrate that for each of the applicable pollutants or pollutant precursors in paragraph (17)(B)1. the emissions are less than or equal to the motor vehicle emissions budget as established in the applicable implementation plan or implementation plan submission as follows:

1. If the applicable implementation plan or implementation plan submission establishes emissions budgets for milestone years, emissions in each milestone year are less than or equal to the motor vehicle emissions budget established for that year;

2. For nonattainment areas, emissions in the attainment year are less than or equal to the motor vehicle emissions budget established in the applicable implementation plan or implementation plan submission for that year;

3. For nonattainment areas, emissions in each analysis or horizon year after the attainment year are less than or equal to the motor vehicle emissions budget established by the applicable implementation plan or implementation plan submission for the attainment year. If emissions budgets are established for years after the attainment year, emissions in each analysis year or horizon year must be less than or equal to the motor vehicle emissions budget for that year, if any, or the motor vehicle emissions budget for the most recent budget year prior to the analysis year or horizon year; and

4. For maintenance areas, emissions in each analysis or horizon year are less than or equal to the motor vehicle emissions budget established by the maintenance plan for that year, if any, or the emissions budget for the most recent budget year prior to the analysis or horizon year.

(18) Criteria and Procedures: Motor Vehicle Emissions Budget(TIP).

(A) The TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in section (32). This criterion may be satisfied if the requirements in subsections (18)(B) and (C) are met.

(B) For areas with a conforming transportation plan that fully meets the content requirements of subsection (6)(A) of this rule, this criterion may be satisfied without additional regional emissions analysis if—

1. Each program year of the TIP is consistent with the federal funding which may be reasonably expected for that year, and required state/local matching funds and funds for state/local funding-only projects are consistent with the revenue sources expected over the same period; and

2. The TIP is consistent with the conforming transportation plan such that the regional emissions analysis already performed for the plan applies to the TIP also. This requires a demonstration that—

A. The TIP contains all projects which must be started in the TIP's time frame in order to achieve the highway and transit system envisioned by the transportation plan in each of its horizon years;

B. All TIP projects which are regionally significant are part of the specific highway or transit system envisioned in the transportation plan's horizon years; and

C. The design concept and scope of each regionally significant project in the TIP is not significantly different from that described in the transportation plan; or

3. If the requirements in paragraphs (18)(B)1. and 2. are not met, then—

A. The TIP may be modified to meet those requirements; or

B. The transportation plan must be revised so that the requirements in paragraphs (18)(B) 1. and 2. are met. Once the revised plan has been found to conform, this criterion is met for the TIP with no additional analysis except a demonstration that the TIP meets the requirements of paragraphs (18)(B)1. and 2.

(C) For areas with a transportation plan that does not meet the content requirements of subsection (6)(A) of this rule, a regional emissions analysis must meet all of the following requirements:

1. The regional emissions analysis shall estimate emissions from the entire transportation system, including all projects contained in the proposed TIP, the transportation plan, and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the time frame of the transportation plan;

2. The analysis methodology shall meet the requirements of subsection (26)(C); and

3. The regional emissions analysis shall satisfy the requirements of paragraphs (17)(B)1., (17)(B)5. and subsection (17)(C) of this rule.

(19) Criteria and Procedures: Motor Vehicle Emissions Budget (Project Not From a Plan and TIP).

(A) The project which is not from a conforming transportation plan and a conforming TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in section (32). It is satisfied if emissions from the implementation of the project, when considered with the emissions from the projects in the conforming transportation plan and TIP and all other regionally significant projects expected in the area, do not exceed the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission).

(B) For areas with a conforming transportation plan that meets the content requirements of subsection (6)(A) of this rule—

1. This criterion may be satisfied without additional regional analysis if the project is included in the conforming transportation plan, even if it is not specifically included in the latest conforming TIP. This requires a demonstration that—

A. Allocating funds to the project will not delay the implementation of projects in the transportation plan or TIP which are necessary to achieve the highway and transit system envisioned by the transportation plan in each of its horizon years;

B. The project is not regionally significant or

is part of the specific highway or transit system envisioned in the transportation plan's horizon years; and

C. The design concept and scope of the project is not significantly different from that described in the transportation plan.

2. If the requirements in paragraph (19)(B)1. are not met, a regional emissions analysis must be performed as follows:

A. The analysis methodology shall meet the requirements of section (26);

B. The analysis shall estimate emissions from the transportation system, including the proposed project and all other regionally significant projects expected in the nonattainment or maintenance area in the time frame of the transportation plan. The analysis must include emissions from all previously approved projects which were not from a transportation plan and TIP; and

C. The regional emissions analysis shall meet the requirements of paragraphs (17)(B)1., and 4. and subsection (17)(C) of this rule.

(C) For areas with a transportation plan that does not meet the content requirements of subsection (6)(A) of this rule, a regional emissions analysis must be performed for the project together with the conforming TIP and all other regionally significant projects expected in the nonattainment or maintenance area. This criterion may be satisfied if—

1. The analysis methodology meets the requirements of subsection (26)(C);

2. The analysis estimates emissions from the transportation system, including the proposed project, and all other regionally significant projects expected in the nonattainment or maintenance area in the time frame of the transportation plan; and

3. The regional emissions analysis satisfies the requirements of paragraphs (17)(B)1., and 5. and subsection (17)(C) of this rule.

(20) Criteria and Procedures: Localized CO Violations (Hot Spots) in the Interim Period.

(A) Each FHWA/FTA project must eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO nonattainment areas). This criterion applies during the interim and transitional periods only. This criterion is satisfied with respect to existing localized CO violations if it is demonstrated that existing localized CO violations will be eliminated or reduced in severity and number as a result of the project.

(B) The demonstration must be performed according to the requirements of sections (5) and (27).

(C) For projects which are not of the type identified by subsection (27)(A), this criterion may be satisfied if consideration of local factors clearly demonstrates that existing CO violations will be eliminated or reduced in severity and number. Otherwise, a quantitative demonstration must be performed according to the requirements of subsection (27)(B).

(21) Criteria and Procedures: Interim Period Reductions in Ozone and CO Areas (Transportation Plan).

(A) A transportation plan must contribute to emissions reductions in ozone and CO nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in section (32). It applies to the net effect on emissions of all projects contained in a new or revised transportation plan. This criterion may be satisfied if a regional emissions analysis is performed as described in subsections (21)(B)—(F).

(B) Determine the analysis years for which emissions are to be estimated. Analysis years shall be no more than ten (10) years apart. The first analysis year shall be no later than the first milestone year (1995 in CO nonattainment areas and 1996 in ozone nonattainment areas). The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five (5) years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.

(C) Define the baseline scenario for each of the analysis years to be the future transportation system that would result from current programs, composed of the following (except that projects listed in sections (30) and (31) need not be explicitly considered):

1. All in-place regionally significant highway and transit facilities, services and activities;

2. All ongoing travel demand management or transportation system management activities; and

3. Completion of all regionally significant projects, regardless of funding source, which are currently under construction or are undergoing right-of-way acquisition (except for hardship acquisition and protective buying); come from the first three (3) years of the previously conforming transportation plan or TIP; or have completed the NEPA process. (For the first conformity determination on the transportation plan after November 24, 1993, a project may not be included in the baseline scenario if one (1) of the following major steps has not occurred within the most recent three (3)-year period: NEPA process completion; formal start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates. Such a project must be included in the action scenario, as described in subsection (21)(D)).

(D) Define the action scenario for each of the analysis years as the transportation system that will result in that year from the implementation of the proposed transportation plan, TIPs adopted under it, and other expected regionally significant projects in the nonattainment area. It will include the following (except that projects listed in sections (27) and (28) need not be explicitly considered):

1. All facilities, services, and activities in the baseline scenario;

2. Completion of all TCMs and regionally significant projects (including facilities, services, and activities) specifically identified in the proposed transportation plan which will be operational or in effect in the analysis year, except that regulatory TCMs may not be assumed to begin at a future time

unless the regulation is already adopted by the enforcing jurisdiction or the TCM is identified in the applicable implementation plan;

3. All travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any federal funding or approval, which have been fully adopted and funded by the enforcing jurisdiction or sponsoring agency since the last conformity determination on the transportation plan;

4. The incremental effects of any travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any federal funding or approval, which were adopted or funded prior to the date of the last conformity determination on the transportation plan, but which have been modified since then to be more stringent or effective;

5. Completion of all expected regionally significant highway and transit projects which are not from a conforming transportation plan and TIP; and

6. Completion of all expected regionally significant non-FHWA/FTA highway and transit projects that have clear funding sources and commitments leading toward their implementation and completion by the analysis year.

(E) Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the baseline and action scenarios and determine the difference in regional VOC and NO_x emissions (unless the administrator has made a determination under section 182(b) of the CAA that additional NO_x reductions would not contribute to attainment in the area and has not notified the state or MPO that a subsequent violation of the ozone standard rescinds that determination) between the two (2) scenarios for ozone nonattainment areas and the difference in CO emissions between the two (2) scenarios for CO nonattainment areas. The analysis must be performed for each of the analysis years according to the requirements of section (26). Emissions in milestone years which are between the analysis years may be determined by interpolation.

(F) This criterion is met if the regional VOC and NO_x emissions (for ozone nonattainment areas) and CO emissions (for CO nonattainment areas) predicted in the action scenario are less

than the emissions predicted from the baseline scenario in each analysis year, and if this can reasonably be expected to be true in the periods between the first milestone year and the analysis years. The regional emissions analysis must show that the action scenario contributes to a reduction in emissions from the 1990 emissions by any nonzero amount.

(22) Criteria and Procedures: Interim Period Reductions in Ozone and CO Areas (TIP).

(A) A TIP must contribute to emissions reductions in ozone nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in section (32). It applies to the net effect on emissions of all projects contained in a new or revised TIP. This criterion may be satisfied if a regional emissions analysis is performed as described in subsections (22)(B)-(F).

(B) Determine the analysis years for which emissions are to be estimated. The first analysis year shall be no later than the first milestone year (1995 in CO nonattainment areas and 1996 in ozone nonattainment areas). The analysis years shall be no more than ten (10) years apart. The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five (5) years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.

(C) Define the baseline scenario as the future transportation system that would result from current programs, composed of the following (except that projects listed in sections (30) and (31) need not be explicitly considered):

1. All in-place regionally significant highway and transit facilities, services and activities;

2. All ongoing travel demand management or transportation system management activities; and

3. Completion of all regionally significant projects, regardless of funding source, which are currently under construction or are undergoing right-of-way acquisition (except for hardship acquisition and protective buying); come from the first three (3) years of the previously conforming TIP; or have completed the NEPA process. (For the first conformity determination on the TIP after November 23, 1993, a project may

not be included in the baseline scenario if one (1) of the following major steps has not occurred within the past three (3) years; NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates. Such a project must be included in the action scenario, as described in subsection (21)(D)).

(D) Define the action scenario as the future transportation system that will result from the implementation of the proposed TIP and other expected regionally significant projects in the nonattainment area in the time frame of the transportation plan. It will include the following (except that projects listed in sections (30) and (31) need not be explicitly considered):

1. All facilities, services, and activities in the baseline scenario;

2. Completion of all TCMs and regionally significant projects (including facilities, services, and activities) included in the proposed TIP, except that regulatory TCMs may not be assumed to begin at a future time unless the regulation is already adopted by the enforcing jurisdiction or the TCM is contained in the applicable implementation plan;

3. All travel demand management programs and transportation systems management activities known to the MPO, but not included in the applicable implementation plan or utilizing any federal funding or approval, which have been fully adopted and funded by the enforcing jurisdiction or sponsoring agency since the last conformity determination on the TIP;

4. The incremental effects of any travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any federal funding or approval, which were adopted or funded prior to the date of the last conformity determination on the TIP, but which have been modified since then to be more stringent or effective;

5. Completion of all expected regionally significant highway and transit projects which are not from a conforming transportation plan and TIP; and

6. Completion of all expected regionally significant non-FHWA/FTA highway and transit projects that have clear funding sources and commitments leading toward their implementation and

completion by the analysis year.

(E) Estimate the emissions predicted to result in each analysis year from travel on the transportation system defined by the baseline and action scenarios, and determine the difference in regional VOC and NOx emissions (unless the administrator has made a determination under section 182(b) of the CAA that additional NOx reductions would not contribute to attainment in the area and has not notified the state or MPO that a subsequent violation of the ozone standards rescinds that determination) between the two (2) scenarios for ozone nonattainment areas and the difference in CO emissions between the two (2) scenarios for CO nonattainment areas. The analysis must be performed for each of the analysis year according to the requirements of section (26). Emissions in milestone years which are between analysis years may be determined by interpolation.

(F) This criterion is met if the regional VOC and NOx emissions in ozone nonattainment areas and CO emissions in CO nonattainment areas predicted in the action scenario are less than the emissions predicted from the baseline scenario in each analysis year, and if this can reasonably be expected to be true in the period between the analysis years. The regional emissions analysis must show that the action scenario contributes to a reduction in emissions from the 1990 emissions by any nonzero amount.

(23) Criteria and Procedures: Interim Period Reductions for Ozone and CO Areas (Project Not from a Plan and TIP).

A transportation project which is not from a conforming transportation plan and TIP must contribute to emissions reductions in ozone and CO nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in section (32). This criterion is satisfied if a regional emissions analysis is performed which meets the requirements of section (21) and which includes the transportation plan and project in the action scenario. If the project which is not from a conforming transportation plan and TIP is a modification of a project currently in the plan or TIP, the baseline scenario must include the project with its original design concept and scope, and the action scenario must include the project with its new design concept and scope.

(24) Transition From the Interim Period to the Control Strategy Period.

(A) Control Strategy Implementation Plan Submissions.

1. The transportation plan and TIP must be demonstrated to conform by eighteen (18) months from the date of the state's initial submission to EPA of each control strategy implementation plan establishing a motor vehicle emission budget. If conformity is not determined by eighteen (18) months from the date of submission such control strategy implementation plan, the conformity status of the transportation plan and TIP will lapse, and no new project-level conformity determinations may be made, until the transportation plan and TIP have been demonstrated to conform.

2. For areas not yet in the control strategy period for a given pollutant, conformity shall be demonstrated using the motor vehicle emissions budget(s) in a submitted control strategy implementation plan revision for that pollutant beginning ninety (90) days after submission, unless EPA declares such budget(s) inadequate for transportation conformity purposes. The motor vehicle emissions budget(s) may be used to determine conformity during the first ninety (90) days after its submission if EPA agrees that the budget(s) are adequate for conformity purposes.

(B) Disapprovals.

1. If EPA disapproves the submitted control strategy implementation plan revision and so notifies the state, MPO, and DOT, which initiates the sanction process under CAA sections 179 or 110(m), the conformity status of the transportation plan and TIP shall lapse one hundred twenty (120) days after EPA's disapproval, and no new project-level conformity determinations may be made. No new transportation plan, TIP, or project may be found to conform until another control strategy implementation plan revision fulfilling the same CAA requirements is submitted and conformity to this submission is determined.

2. Notwithstanding paragraph (B)1. of this section, if EPA disapproves the submitted control strategy implementation plan revision but makes a protective finding, the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions as a result of the disapproval are imposed on the nonattainment area under section 179(b)(1) of the CAA. No new transportation plan, TIP, or project may be found to conform until another control strategy implementation plan revision fulfilling the same CAA requirements is submitted and conformity to this submission is determined.

(C) Failure to Submit and Incompleteness. For areas where EPA notifies the state, MPO, and DOT of the state's failure to submit or submission of an incomplete control strategy implementation plan revision, which initiates the sanction process under CAA section 179 or 110(m), the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions are imposed on the nonattainment area for such failure under section 179(b)(1) of the CAA, unless the failure has been remedied and acknowledged by a letter from EPA regional administrator.

(D) Federal Implementation Plans. When EPA promulgates a federal implementation plan that contains motor vehicle emissions budget(s) as a result of a state failure, the conformity lapse imposed by this section because of that state failure is removed.

(E) Projects. If the currently conforming transportation plan and TIP have not been demonstrated to conform according to transitional period criteria and procedures, the requirements of paragraphs (24)(E)1. and 2. must be met.

1. Before a FHWA/FTA project which is regionally significant and increases single-occupant vehicle capacity (a new general purpose highway on a new location or adding general purpose lanes) may be found to conform, the state air quality agency must be consulted on how the emissions which the existing transportation plan and TIP's conformity determination estimates for the action scenario (as required by sections (21)-(23)) compare to the motor vehicle emissions budget in the implementation plan submission or the projected motor vehicle emissions budget in the implementation plan under development.

2. In the event of unresolved disputes on such project-level conformity determinations, the state air quality agency may escalate the issue to the governor consistent with the procedure in subsection (5)(E) of this rule, which applies for any state air quality agency comments on a conformity determination.

(F) Redetermination of Conformity of the Existing Transportation Plan and TIP According to the Transitional Period Criteria and Procedures.

1. The redetermination of the conformity of the existing transportation plan and TIP according to transitional period criteria and procedures (as required by paragraphs (24)(A)1. and (24)(D)1.) does not require a new emissions analysis and does not have to satisfy the requirements of

sections (10) and (11) if—

A. The control strategy implementation plan revision submitted to EPA uses the MPO's modeling of the existing transportation plan and TIP for its projections of motor vehicle emissions; and

B. The control strategy implementation plan does not include any transportation projects which are not included in the transportation plan and TIP.

2. A redetermination of conformity as described in paragraph (24)(E)1. is not considered a conformity determination for the purposes of paragraphs (4)(B)4. or (4)(C)4. regarding the maximum intervals between conformity determinations. Conformity must be determined according to all applicable criteria and procedures of section (9) within three (3) years of the last determination which did not rely on paragraph (24)(E)1.

(G) Nonattainment Areas Which Are Not Required to Demonstrate Reasonable Further Progress and Attainment. If an area listed in section (32) of this rule submits a control strategy implementation plan revision, the requirements of subsections (A) and (E) of this section apply. Because the areas listed in section (32) are not required to demonstrate reasonable further progress and attainment and therefore have no CAA deadline, the provisions of subsection (B) and (C) of this section do not apply to these areas.

(H) Maintenance Plans. If a control strategy implementation plan revision is not submitted to EPA but a maintenance plan required by CAA section 175A is submitted to EPA, the requirements of subsection (24)(A) or (D) apply, with the maintenance plan submission treated as a control strategy implementation plan revision for the purposes of those requirements.

(25) Requirements for Adoption or Approval of Projects by Recipients of Funds Designated Under Title 23 U.S.C. or the Federal Transit Act.

No recipient of federal funds designated under Title 23 U.S.C or the Federal Transit Act shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless there is a currently conforming transportation plan and TIP consistent with the requirements of section (14) of this rule and the requirements of one (1) of the

following subsections (25)(A)—(E) are met:

(A) The project comes from a conforming plan and program consistent with the requirements of section (15);

(B) The project is included in the regional emissions analysis supporting the currently conforming TIP's conformity determination, even if the project is not strictly included in the TIP for the purposes of MPO project selection or endorsement, and the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility;

(C) During the control strategy or maintenance period, the project is consistent with the motor vehicle emissions budget(s) in the applicable implementation plan consistent with the requirements of section (19);

(D) During Phase II of the interim period, the project contributes to emissions reductions or does not increase emissions consistent with the requirements of section (23); or

(E) During the transitional period, the project satisfies the requirements of both subsections (25)(C) and (D) of this section.

(26) Procedures for Determining Regional Transportation-Related Emissions.

(A) General Requirements.

1. The regional emissions analysis for the transportation plan, TIP, or project not from a conforming plan and TIP shall include all regionally significant projects expected in the nonattainment or maintenance area, including FHWA/FTA projects proposed in the transportation plan and TIP, and all other regionally significant projects which are disclosed to the MPO as required by section (5) of this rule. Projects which are not regionally significant are not required to be explicitly modeled, but vehicle miles traveled (VMT) from such projects must be estimated in accordance with reasonable professional practice. The effects of TCMs and similar projects that are not regionally significant may also be estimated in accordance with reasonable professional practice.

2. The emissions analysis may not include for

emissions reduction credit any TCMs which have been delayed beyond the scheduled date(s) until such time as implementation has been assured. If the TCM has been partially implemented and it can be demonstrated that it is providing quantifiable emission reduction benefits, the emissions analysis may include that emissions reduction credit.

3. Emissions reduction credit from projects, programs, or activities which require a regulation in order to be implemented may not be included in the emissions analysis unless the regulation is already adopted by the enforcing jurisdiction. Adopted regulations are required for demand management strategies for reducing emissions which are not specifically identified in the applicable implementation plan, and for control programs which are external to the transportation system itself, such as tailpipe or evaporative emission standards, limits on gasoline volatility, inspection and maintenance programs, and oxygenated or reformulated gasoline or diesel fuel. A regulatory program may also be considered to be adopted if an opt-in to a federally enforced program has been approved by EPA, if EPA has promulgated the program (if the control program is a federal responsibility, such as tailpipe standards), or if the CAA requires the program without need for individual state action and without any discretionary authority for EPA to set its stringency, delay its effective date, or not implement the program.

4. Notwithstanding paragraph (26)(A)3. during the transitional period, control measures or programs which are committed to in an implementation plan submission as described in sections (17)—(19), but which has not received final EPA action in the form of a finding of incompleteness, approval, or disapproval, may be assumed for emission reduction credit for the purpose of demonstrating that the requirements of sections (17)—(19) are satisfied.

5. A regional emissions analysis for the purpose of satisfying the requirements of sections (21)—(23) may account

for the programs in paragraph (26)(A)4. but the same assumptions about these programs shall be used for both the baseline and action scenarios.

6. Ambient temperatures shall be consistent with those used to establish the emissions budget in the applicable implementation plan. Factors other than temperatures, for example the fraction of travel in a hot stabilized engine mode, may be modified after interagency consultation in accordance with section (5) if the newer estimates incorporate additional or more geographically specific information or represent a logically estimated trend in such factors beyond the period considered in the applicable implementation plan.

(B) Serious, Severe, and Extreme Ozone Nonattainment and Serious Carbon Monoxide Areas after January 1, 1995. Estimates of regional transportation-related emissions used to support conformity determinations must be made according to procedures which meet the requirements in paragraphs (26)(B)1.—4.

1. A network-based transportation demand model(s) relating travel demand and transportation system performance to land use patterns, population demographics, employment, transportation infrastructure, and transportation policies must be used to estimate travel within the metropolitan planning area of the nonattainment area. Such a model shall possess the following attributes:

A. The modeling methods and the functional relationships used in the model(s) shall in all respects be in accordance with acceptable professional practice, and reasonable for purposes of emission estimation;

B. The network-based model(s) must be validated against ground counts for a base year that is not more than ten (10) years prior to the date of the conformity determination. Land use, population, and other inputs must be based on the best available information and appropriate to the validation base year;

C. For peak-hour or peak-period traffic assignments, a capacity sensitive assignment methodology must be used;

D. Zone-to-zone travel times used to distribute trips between origin and destination pairs must be in reasonable agreement with the travel times which result from the process of

assignment of trips to network links. Where use of transit currently is anticipated to be a significant factor in satisfying transportation demand, these times should also be used for modeling mode splits;

E. Free-flow speeds on network links shall be based on empirical observations;

F. Peak and off-peak travel demand and travel times must be provided;

G. Trip distribution and mode choice must be sensitive to pricing, where pricing is a significant factor, if the network model is capable of such determinations and the necessary information is available;

H. The model(s) must utilize and document a logical correspondence between the assumed scenario of land development and use, and the future transportation system for which emissions are being estimated. Reliance on a formal land-use model is not specifically required but is encouraged;

I. A dependence of trip generation on the accessibility of destinations via the transportation system (including-pricing) is strongly encouraged but not specifically required, unless the network model is capable of such determinations and the necessary information is available;

J. A dependence of regional economic and population growth on the accessibility of destinations via the transportation system is strongly encouraged but not specifically required, unless the network model is capable of such determinations and the necessary information is available; and

K. Consideration of emissions increases from construction-related congestion is not specifically required.

2. Highway Performance Monitoring System (HPMS) estimates of vehicle miles traveled shall be considered the primary measure of vehicle miles traveled within the portion of the nonattainment or maintenance area and for the functional classes of roadways included in HPMS, for urban areas which are sampled on a separate urban area basis. A factor(s) shall be developed to reconcile and calibrate the network-based model estimates of vehicle miles traveled in the base year of its validation to the HPMS estimates for the same period, and these factors shall be applied to model estimates of future vehicle

miles traveled. In this factoring process, consideration will be given to differences in the facility coverage of the HPMS and the modeled network description. Departure from these procedures is permitted with the concurrence of DOT and EPA.

3. Reasonable methods shall be used to estimate nonattainment area vehicle travel on off-network roadways within the urban transportation planning area, and on roadways outside the urban transportation planning area.

4. Reasonable methods in accordance with good practice must be used to estimate traffic speeds and delays in a manner that is sensitive to the estimated volume of travel on each roadway segment represented in the network model.

(C) Areas Which Are Not Serious, Severe, or Extreme Ozone Nonattainment Areas or Serious Carbon Monoxide Nonattainment Areas, or Before January 1, 1995.

1. Procedures which satisfy some or all of the requirements of subsection (26)(B) shall be used in all areas not subject to subsection (26)(B) in which those procedures have been the previous practice of the MPO.

2. Regional emissions may be estimated by methods which do not explicitly or comprehensively account for the influence of land use and transportation infrastructure on vehicle miles traveled and traffic speeds and congestion. Such methods must account for VMT growth by extrapolating historical VMT or projecting future VMT by considering growth in population and historical growth trends for vehicle miles traveled per person. These methods must also consider future economic activity, transit alternatives, and transportation system policies.

(27) Procedures for Determining Localized CO Concentrations (Hot-Spot Analysis).

(A) In the following cases, CO hot-spot analyses must be based on the applicable air quality models, databases, and other requirements specified in 40 CFR part 51 Appendix W ("Guideline on Air Quality Models (Revised)" (1988), supplement A (1987) and supplement B (1993), EPA publication no. 450/2-78-027R), unless, after the interagency consultation process described in section (5) and with the approval of the EPA regional administrator, these models, databases, and other requirements are determined to be inappropriate:

1. For projects in or affecting locations, areas, or categories of sites which are identified in the applicable implementation plan as sites of current violation or possible current violation;

2. For those intersections at Level-of-Service D, E, or F, or those that will change to Level-of-Service D, E, or F because of increased traffic volumes related to a new project in the vicinity;

3. For any project involving or affecting any of the intersections which the applicable implementation plan identifies as the top three (3) intersections in the nonattainment or maintenance area based on the highest traffic volumes;

4. For any project involving or affecting any of the intersections which the applicable implementation plan identifies as the top three (3) intersections in the nonattainment or maintenance area based on the worst Level-of-Service; and

5. Where use of the Guideline models is practicable and reasonable given the potential for violations.

(B) In cases other than those described in subsection (27)(A) other quantitative methods may be used if they represent reasonable and common professional practice.

(C) CO hot-spot analyses must include the entire project, and may be performed only after the major design features which will significantly impact CO concentrations have been identified. The background concentration can be estimated using the ratio of future to current traffic multiplied by the ratio of future to current emission factors.

(D) Hot-spot analysis assumptions must be consistent with those in the regional emissions analysis for those inputs which are required for both analyses.

(E) CO mitigation or control measures shall be assumed in the hot-spot analysis only where there are written enforceable

commitments from the project sponsor or operator to the implementation of such measures, as required by subsection (29)(A).

(F) CO hot-spot analyses are not required to consider construction-related activities which cause temporary increases in emissions. Each site which is affected by construction-related activities shall be considered separately, using, established Guideline methods. Temporary increases are defined as those which occur only during the construction phase and last five (5) years or less at any individual site.

(28) Using the Motor Vehicle Emissions Budget in the Applicable implementation Plan (or Implementation Plan Submission).

(A) In interpreting an applicable implementation plan (or implementation plan submission) with respect to its motor vehicle emissions budget(s), the MPO and DOT may not infer additions to the budget(s) that are not explicitly intended by the implementation plan (or submission). Unless the implementation plan explicitly quantifies the amount by which motor vehicle emissions could be higher while still allowing a demonstration of compliance with the milestone, attainment, or maintenance requirement and explicitly states an intent that some or all of this additional amount should be available to the MPO and DOT in the emission budget for conformity purposes, the MPO may not interpret the budget to be higher than the implementation plan's estimate of future emissions. This applies in particular to applicable implementation plans (or submissions) which demonstrate that after implementation of control measures in the implementation plan:

1. Emissions from all sources, will be less than the total emissions that would be consistent with a required demonstration of an emissions reduction milestone;

2. Emissions from all sources will result in achieving attainment prior to the attainment deadline or ambient concentrations in the attainment deadline year will be lower than needed to demonstrate attainment; or

3. Emissions, will be lower than needed to provide for continued maintenance.

(B) If an applicable implementation plan submitted before November 24, 1993, demonstrates that emissions from all sources will be less than the total emissions that would be consistent

with attainment and quantifies that safety margin, the state may submit an implementation plan revision which assigns some or all of this safety margin to highway and transit motor vehicles for the purposes of conformity. Such an implementation plan revision, once it is endorsed by the director and has been subject to a public hearing, may be used for the purposes of transportation conformity before it is approved by EPA.

(C) A conformity demonstration shall not trade emissions among budgets which the applicable implementation plan (or implementation plan submission) allocates for different pollutants or precursors, or among budgets allocated to motor vehicles and other sources, without an implementation plan revision or an applicable implementation plan which establishes mechanisms for such trades.

(D) If the applicable implementation plan (or implementation plan submission) estimates future emissions by geographic subarea of the nonattainment area, the MPO and DOT are not required to consider this to establish subarea budgets, unless the applicable implementation plan (or implementation plan submission) explicitly indicates an intent to create such subarea budgets for the purposes of conformity.

(29) Enforceability of Design Concept and Scope and Project-Level Mitigation and Control Measures.

(A) Prior to making a conformity determination, the MPO, other recipient of funds designated under Title 23 U.S.C. or the Federal Transit Act, FHWA, or FTA must obtain from the project sponsor or operator enforceable written commitments to implement in the construction of the project and operation of the resulting facility or service any project-level mitigation or control measures which are identified as conditions for NEPA process completion with respect to local CO impacts. Before making conformity determinations enforceable written commitments must also be obtained for project-level mitigation or control measures which are conditions for making conformity determinations for a transportation plan or TIP and included in the project design concept and scope which is used in the regional emissions analysis required by sections (17)—(19) and sections (21)—(23) or used in the project-level hot-spot analysis required by sections (16) and (20).

(B) Project sponsors voluntarily committing to mitigation measures to facilitate positive conformity determinations shall provide enforceable written commitments and must comply with the obligations of such commitments.

(C) Enforceable written commitments to mitigation or control measures must be obtained prior to a positive conformity determination, and project sponsors must comply with such commitments.

(D) During the control strategy and maintenance periods, if the MPO or project sponsor believes the mitigation or control measure is no longer necessary for conformity, the project sponsor or operator may be relieved of its obligation to implement the mitigation or control measure if it can demonstrate that the requirements of sections (16)—(18) are satisfied without the mitigation or control measure, and so notifies the agencies involved in the interagency consultation process required under section (5). The MPO and DOT must confirm that the transportation plan and TIP still satisfy the requirements of sections (17) and (18) and that the project still satisfies the requirements of section (16) and therefore that the conformity determinations for the transportation plan, TIP, and project are still valid.

(30) Exempt Projects.

Notwithstanding the other requirements of this rule, highway and transit projects of the types listed in Table 2 are exempt from the requirement that a conformity determination be made. Such projects may proceed toward implementation even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 2 is not exempt if the MPO in consultation with other agencies pursuant to section (5), the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potentially adverse emissions impacts for any reason. The state and the MPO must assure that exempt projects do not interfere with TCM implementation.

Table 2. Exempt Projects**Safety**

Railroad/highway crossing
 Hazard elimination program
 Safer nonfederal-aid system roads
 Shoulder improvements
 Increasing sight distance
 Safety improvement program
 Traffic control devices and operating assistance other than
 signalization projects
 Railroad/highway crossing warning devices
 Guardrails, median barriers, crash cushions
 Pavement resurfacing or rehabilitation
 Pavement marking demonstration
 Emergency relief (23 U.S.C. 125)
 Fencing
 Skid treatments
 Safety roadside rest areas
 Adding medians
 Truck climbing lanes outside the urbanized area
 Lighting improvements
 Widening narrow pavements or reconstructing
 bridges (no additional travel lanes)
 Emergency truck pullovers

Mass Transit

Operating assistance to transit agencies
 Purchase of support vehicles
 Rehabilitation of transit vehicles
 Purchase of office, shop, and operating
 equipment for existing facilities
 Purchase of operating equipment for vehicles
 (for example: radios, fareboxes, lifts, etc.)
 Construction or renovation of power, signal
 and communications systems
 Construction of small passenger shelters and
 information kiosks
 Reconstruction or renovation of transit buildings
 and structures (for example; rail or bus, buildings, storage
 and maintenance facilities, stations, terminals, and ancillary
 structures)
 Rehabilitation or reconstruction of track structures,
 track, and trackbed in existing rights-of-way
 Purchase of new buses and rail cars to replace
 existing vehicles or for minor expansions of the fleet

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Construction of new bus or rail storage/ maintenance facilities
categorically excluded in 23 CFR part 771

Air Quality

Continuation of ride-sharing and van-pooling promotion activities
at current levels

Bicycle pedestrian facilities

Other

Specific activities which do not involve or lead
directly to construction, such as:

Planning and technical studies

Grants for training and research programs

Planning activities conducted pursuant to Titles 23 and 49 U.S.C.

Federal-aid systems revisions

Engineering to assess social, economic, and environmental effects
of the proposed action or alternatives to that action

Noise attenuation advance land acquisitions (23 CFR part 712 or
23 CFR part 771)

Acquisition of scenic easements

Plantings, landscaping, etc.

Sign removal

Directional and informational signs

Transportation enhancement activities (except rehabilitation and
operation of historic transportation buildings, structures, or
facilities)

Repair of damage caused by natural disasters,
civil unrest, or terrorist acts, except projects involving
substantial functional, locational, or capacity changes

(31) Projects Exempt From Regional Emissions Analyses.

Notwithstanding the other requirements of this rule, highway and transit projects of the types listed in Table 3 are exempt from regional emissions analysis requirements. The local effects of these projects with respect to CO concentrations must be considered to determine if a hot-spot analysis is required prior to making a project-level conformity determination. These projects may then proceed to the project development process even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 3 is not exempt from regional emissions analysis if the MPO in consultation with other agencies pursuant to section (5), the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potential regional impacts for any reason.

**Table 3. Projects Exempt from Regional
Emissions Analyses**

Intersection channelization projects
 Intersection signalization projects at individual intersections
 Interchange reconfiguration projects
 Changes in vertical and horizontal alignment
 Truck size and weight inspection stations
 Bus terminals and transfer points

(32) Special Provisions for Nonattainment Areas Which Are Not Required to Demonstrate Reasonable Further Progress and Attainment.

(A) Application. This section applies in the following areas:

1. Marginal ozone areas;
2. Submarginal ozone areas;
3. Transitional ozone areas;
4. Incomplete data ozone areas;
5. Moderate CO areas with a design value of twelve and seven-tenths (12.7) ppm or less; and
6. Not classified CO areas.

(B) Default Conformity Procedures. The criteria and procedures in sections (21)—(23) will remain in effect throughout the control strategy period for transportation plans, TIPS, and projects (not from a conforming plan and TIP) in lieu of the procedures in sections (17)—(19), except as otherwise provided in subsection (C).

(C) Optional Conformity Procedures. The state or MPO may voluntarily develop an attainment demonstration and corresponding motor vehicle emissions budget like those required in areas with higher nonattainment classifications. In this case, the state must submit an implementation plan revision which contains that budget and attainment demonstration. Once EPA has approved this implementation plan revision, the procedures in sections (17)—(19) apply in lieu of the procedures in sections (21)—(23).

EPA Rulemakings

Description: The EPA approved an amendment to the rule which adopted specific revisions to the Federal transportation conformity rule contained in 40 C.F.R. 51.390-464 (Subpart T) as amended on November 14, 1995. The action of 63 FR 6645 (February 10, 1998) corrects the effective date of the September 5, 1997, notice to February 10, 1998, to be consistent with sections 801 and 808 of the Congressional Review Act.

[illegible]

Description: The EPA approved a new regulation which takes final action to approve the SIP submitted by the state of Missouri for the purpose of fulfilling the requirements set forth in the EPA's Transportation Conformity rule. The SIP was submitted by the state to satisfy the Federal requirements in 40 C.F.R. 51.396.

[illegible]

Difference Between the State and EPA-Approved Regulation

None.